

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Plaintiff and Counterclaim
Defendant,

v.

VESTMONT LIMITED PARTNERSHIP,
VESTMONT LIMITED PARTNERSHIP II,
VESTMONT LIMITED PARTNERSHIP III,
and VESTERRA CORPORATION d/b/a
MONTGOMERY SQUARE PARTNERSHIP,

Defendants and Counterclaim
Plaintiffs.

CIVIL ACTION NO. 05-11614-WGY

JOINT PRE-TRIAL CONFERENCE MEMORANDUM

Plaintiff John Hancock Life Insurance Company (“John Hancock” or “Hancock”) and defendants Vestmont Limited Partnership, Vestmont Limited Partnership II, Vestmont Limited Partnership III, and Vesterra Corporation d/b/a Montgomery Square Partnership (collectively, “Montgomery Partners”, “Vesterra” or “Defendants”), hereby submit this Joint Pre-Trial Conference Memorandum pursuant to the Court’s March 17, 2006, Procedural Order and in advance of the final pre-trial conference scheduled for March 30, 2006, commencing at 2:00 p.m.

A. Summary Of Evidence To Be Offered

1. Plaintiff's Concise Summary of Evidence

This is a breach of contract action in which John Hancock seeks to enforce the unambiguous terms of a binding \$32 million loan commitment that Hancock and defendants negotiated and entered into in the summer of 2004 (the "Loan Commitment").

Under the Loan Commitment, Hancock agreed, subject to various standard and negotiated conditions, to provide Montgomery Partners with \$32 million in permanent financing on a 256 unit apartment complex in North Wales, Pennsylvania (the "Avenel Apartments") at any time over the ensuing twelve months at a "locked" interest rate of 6.18% per annum. Montgomery Partners expressly agreed, in return, to *either* actually "borrow the Principal Amount" set forth in the Loan Commitment from John Hancock on or before August 1, 2005, *or* to pay "all ... damages, losses, costs and expenses suffered or incurred by John Hancock" as a result of their failure to close the loan.

Notwithstanding the clear terms of the Loan Commitment, Montgomery Partners admittedly made no effort to "borrow the Principal Amount" from John Hancock on or before the scheduled closing date of August 1, 2005. Rather, Montgomery Partners elected to take advantage of the strong demand for apartment properties in the Pennsylvania area to enlist a buyer for the Avenel Apartments project. Beginning in May of 2005, Montgomery Partners began the process of soliciting private bids on the Avenel Apartments from interested buyers. Montgomery Partners ultimately agreed to sell the project to an entity controlled by JP Morgan Chase Bank for \$59,250,000. Montgomery Partners' anticipated gain on the sale of the Avenel Apartments is approximately \$28 million.

Due to a significant drop in interest rates between execution of the Loan Commitment and the time of Montgomery Partners' default, John Hancock's current total economic losses on this failed transaction (not including attorney's fees) are estimated to be approximately \$4,700,000. John Hancock seeks compensation for its losses, as well as its reasonable attorney's fees and costs.

2. Defendants' Concise Summary of Evidence

This lawsuit concerns a mortgage loan application (the "Loan Application") submitted by Defendants/Counterclaim Plaintiffs (collectively, "Defendants" or "Vesterra") to Plaintiff John Hancock Life Insurance Company ("John Hancock"). The Loan was never made. Vesterra will show that after negotiating the Loan Application, which contained certain terms and conditions and included Vesterra's own financial projections, John Hancock, without disclosure to Vesterra, changed the terms and conditions and modified the borrower's financial projections.

John Hancock's own documents, and the testimony of its witnesses, demonstrate that, without informing Vesterra, John Hancock only approved the Loan Application after adding another requirement for disbursement of the mortgage loan -- a requirement which Vesterra's own figures showed that it was unlikely to meet. John Hancock did not inform Vesterra of this additional requirement after being told by its local field representative that it was a "deal killer," and after realizing that killing the deal at that point would result in a hedge loss of \$355,000 and the return of \$960,000 in fees to Vesterra.

Nonetheless, John Hancock proceeded to add this new requirement -- referred to as the 10% Constant requirement -- for the sizing and disbursement of the loan, and modified the related financial projections, because this was required by John Hancock's new head of

mortgage operations in the United States. Testimony from both John Hancock and Vesterra witnesses will confirm that John Hancock never told Vesterra about the new requirement and modified financial projections. In fact, Vesterra did not learn about the additional requirement until discovery in this litigation commenced.

Because of this added disbursement requirement, which Vesterra's figures showed that it would not meet, John Hancock was not ready, willing, and able to perform under the conditions contained in the Loan Application. Accordingly, John Hancock cannot sue Vesterra for breach of the Loan Application. Further, Vesterra relied on John Hancock's failure to disclose the added 10% Constant requirement, and the manipulated financial projections, in not seeking to rescind any agreement and in not obtaining alternate financing from a lender that would not impose such an unacceptable condition for disbursement of the Loan.

In addition, Vesterra will prove that there was no "meeting of the minds" on the essential terms of the agreement between the parties.¹ Vesterra possesses ample evidence to show the existence of and materiality of the difference in John Hancock's "state of mind" when it appeared to accept Vesterra's offer. This evidence includes admissions by John Hancock employees and the refusal to produce, on attorney-client privilege grounds, an amended Loan Application which was prepared by John Hancock but never submitted to Vesterra (which the Court may presume, and the jury may infer, would have been submitted to Vesterra's to seek its agreement to this new condition and the modified financial projections).

Vesterra will also introduce both fact and expert testimony respecting the damages for

¹ Although the Court has ruled that a contract was formed, Vesterra intends to introduce evidence, including expert testimony, that will show that the John Hancock adopted the 10% Constant as a requirement for disbursement of the loan before it "accepted" the Loan Application, and will then respectfully request reconsideration of the Court's ruling on this issue.

failure to close the Loan that were contemplated by the parties when they signed the Loan Application. Certain conditions of the Loan Application were carefully drafted by John Hancock to expressly provide, in great detail, that **after the loan was closed**, the borrower would be required to pay to the lender the yield expected over the life of the loan, even if the borrower were to seek to repay it prior to its expiration. Vesterra will present evidence that those who are experienced in negotiating the terms and conditions of commercial mortgages such as this would expect any substantial deal term to be explicitly set forth in this manner. However, a plain reading of the Loan Application shows that no express provision for such a measure of damages is set forth for the eventuality present in this case -- where **the Loan never closed**. Instead, John Hancock specified in the Loan Application that it would be entitled to retain the fees paid, in this case \$960,000, and any damages or "Costs" as defined in the Loan Application. There is no question that the Loan Application does not make any mention of "yield maintenance" for a loan which was never made.

Vesterra will also show that, due to circumstances beyond its control, the apartments never reached the required minimum occupancy required in the Loan Application for John Hancock to disburse any portion of the loan. There was no legal obligation on Vesterra to seek to close the Loan in such circumstances. Consequently, in the spring of 2005 Vesterra sought out other options, including sale of the property, and promptly informed John Hancock. When John Hancock learned of this, it decided to seek to share in the appreciation in the value of the property, notwithstanding the absence of any right to do so.

John Hancock has presented no evidence of any actual losses due to failure of the loan to close. Vesterra will present evidence that if there were any such losses, they amount to very little, and further that John Hancock has failed to mitigate any such damages.

B. Agreed-Upon Facts

The Parties have agreed upon and stipulate to the following facts:

1. Plaintiff John Hancock Life Insurance Company ("John Hancock") is an insurance company existing under the laws of the Commonwealth of Massachusetts with its principal place of business in Boston, Massachusetts. John Hancock provides a broad array of insurance and investment products to individual and institutional customers, primarily in North America.
2. John Hancock's Real Estate Investment Group provides commercial mortgage loans on properties, including large residential apartment complexes.
3. John Hancock was acquired by Manulife Financial Corporation of Canada ("Manulife") on April 28, 2004.
4. Vesterra Corporation is a corporation existing under the laws of the Commonwealth of Pennsylvania, and Vestmont Limited Partnership, Vestmont Limited Partnership II and Vestmont Limited Partnership III are limited partnerships existing under the laws of the Commonwealth of Pennsylvania. Each is a general partner in Montgomery Square Partnership ("Montgomery Square").
5. Montgomery Square was formed for the purpose of developing a tract of land containing approximately 180 acres located in the suburban Philadelphia area. This development eventually included a retail shopping center and a 256-unit residential apartment complex known as "Avenel at Montgomery Square" (the "Avenel Apartments").
6. Montgomery Square's three principals -- James R. Koller, Joseph P. Kelly and Frank C. Palopoli -- all are experienced and sophisticated real estate developers.

7. Mr. Koller is a licensed attorney and a former partner in the real estate department of the international law firm of Dechert, Price & Rhoads (now "Dechert").

8. Mr. Palopoli is a real estate consultant with more than twenty-five years of experience.

9. Joseph Kelly is an experienced accountant who formerly was a CPA.

10. Together, Messrs. Koller, Kelly and Palopoli have developed more than 1,500,000 square feet of commercial properties in the Pennsylvania area since 1986.

11. Montgomery Square Partnership is the owner and developer of the Avenel Apartments. Construction of the Avenel Apartments commenced in 2003 and originally was scheduled to be completed in March 2005.

12. In the summer of 2004, Montgomery Square sought a forward commitment for a permanent mortgage loan of \$32 million in order to lock in a favorable interest rate and to repay its existing construction loan of more than \$30 million and related costs.

13. In June 2004, John Hancock's regional manager in Pennsylvania, John Ferrie, notified John Hancock's home office of a potential loan opportunity in Montgomery County, Pennsylvania.

14. John Hancock and Montgomery Square thereafter negotiated the terms of a document that, in its final form, is entitled "Application to John Hancock Life Insurance Company for a First Mortgage Loan" (the "Loan Application/Commitment").

15. The negotiations leading to the execution of the Loan Application/Commitment by Montgomery Square took place exclusively in Pennsylvania.

16. James R. Koller, on behalf of Montgomery Square Partnership, signed the Loan Application/Commitment on July 30, 2004 in Pennsylvania, and submitted it to John Hancock's representative in Pennsylvania.

17. Pursuant to the Loan Application/Commitment, Montgomery Square obtained an interest rate lock for one year at 6.18% on August 2, 2004.

18. Montgomery Square paid certain fees to John Hancock as specified in the Loan Application/Commitment.

19. Montgomery Square paid a "Processing Fee" by delivering a check in the amount of \$5,000 to John Hancock's representative in Pennsylvania.

20. In August 2004, Montgomery Square paid an "Application Fee" by obtaining an irrevocable transferable Letter of Credit payable to John Hancock in the amount of \$640,000 and delivering it to John Hancock's representative in Pennsylvania.

21. In August 2004, Montgomery Square paid a "Commitment Fee" by obtaining an irrevocable transferable Letter of Credit payable to John Hancock in the amount of \$320,000 and delivering it to John Hancock's representative in Pennsylvania.

22. Once the Loan Application/Commitment was signed by Montgomery Square and the \$5,000 fee paid, John Hancock's internal approval process began.

23. Once the Loan Application/Commitment was negotiated and signed by Montgomery Square, the following occurred: (1) an interest rate was "locked in" for the proposed loan; (2) a loan approval package containing, among other things, a description of the proposed loan terms and information regarding the Avenel Apartments, was circulated to designated Hancock officers for their review; and (3) John Hancock "allocated" the \$32 million for the Loan to various lines of business.

24. During the loan application process, various internal underwriting guidelines typically are used by lenders such as John Hancock to assess the borrower's ability to repay, and the lender's risk in making, a particular loan.

25. Ivor Thomas, formerly a Manulife employee, became the head of John Hancock's mortgage operations in the United States after it merged with Manulife.

26. Mr. Malik reduced the estimated expenses by \$140,000 and the reserves by \$26,500 (from \$250 per unit to \$150 per unit).

27. On August 17, 2004, Patricia Coyne of John Hancock sent a Memorandum to Mr. Malik, with a copy to John Hancock's closing department.

28. On August 17, 2004, Mr. Malik countersigned the Loan Application/Commitment on behalf of John Hancock.

29. The Loan Application/Commitment executed by the parties does not contain a "10% Constant" requirement.

30. The anticipated cash flow or income for the Avenel Apartments was to be derived primarily from the leasing of apartments.

31. Before February 2005, Bozzuto Management Company ("Bozzuto") managed the Avenel Apartments project.

32. In February 2005, Koller Kelly, LLC ("Koller Kelly") began to provide management services for Avenel.

33. John Hancock commenced this action for damages in August 2005.

34. John Hancock collected and retains the \$965,000 in fees paid by Montgomery Square under the Loan Application/Commitment.

C. Contested Issues of Fact

1. Plaintiff believes the contested issues of fact are as follows:

- i. Whether John Hancock was “ready, willing and able” to close the Loan in accordance with the terms of the Loan Commitment on or before August 1, 2005.
- ii. Whether John Hancock’s internal use of the 10% Constant underwriting changed the terms of the Loan Commitment.
- iii. Whether John Hancock’s internal use of the 10% Constant underwriting guideline was fraudulent.
- iv. Whether the Defendants actually relied in any way upon John Hancock’s internal use or non-use of the 10% Constant underwriting guideline.
- v. The amount of “damages, losses, costs and expenses suffered or incurred by John Hancock” as a result of the Defendants’ failure to close the Loan in accordance with the terms of the Loan Commitment on or before August 1, 2005.
- vi. Whether any of the Defendants’ Affirmative Defenses preclude John Hancock’s relief, in whole or in part.

2. Defendants believe the contested issues of fact to be as follows:

- i. Whether John Hancock was “ready, willing and able” to close the Loan in accordance with the terms of the Loan Application.
- ii. Whether the 10% Constant “disbursement requirement” continued to be a requirement for disbursement of the Loan after John Hancock’s August, 2004 “approval” of the Loan.
- iii. Whether John Hancock breached any agreement based on the Application when it added a disbursement requirement to those in the Loan Application/Commitment and manipulated the financial projections submitted by Defendants and made a part of the Loan Application/Commitment.
- iv. Whether John Hancock’s decision not to disclose the 10% Constant disbursement requirement and the manipulated financial projections was based on John Hancock’s awareness that such disclosure would have caused Vesterra to cancel or rescind the Loan Application.

- v. Whether Vesterra reasonably relied on this non-disclosure in not revoking the Loan Application before John Hancock "approved" it and in not canceling or rescinding after John Hancock "approved" it.
- vi. Whether and to what degree Vesterra was injured as a result of such reliance.
- vii. Whether John Hancock's actions were such as to demonstrate intentional, willful, wanton or reckless conduct, thereby allowing the award of punitive damages.
- viii. If there was a breach by Vesterra, what losses were contemplated by the parties at the time they entered into the Loan Application for which Defendants could be liable for failure to close the Loan, as opposed to remedies for prepayment of or default on the Loan after it was disbursed.
- ix. If there was a breach by Vesterra, whether John Hancock incurred any damages recoverable under the Loan Application when the Loan failed to close.
- x. Whether John Hancock mitigated any such losses, and the degree to which John Hancock could have reasonably mitigated any such losses.
- xi. Whether any of the Defendants' Affirmative Defenses and Counterclaims preclude John Hancock's relief, in whole or in part.
- xii. Whether there was a meeting of the minds on the terms and conditions of the Loan Application for disbursement of the Loan. (Defendants recognize that the Court has ruled that a contract was formed, but will respectfully request reconsideration of that ruling upon consideration of the complete evidentiary record at trial.)

D. Jurisdictional Questions

The Parties are not aware of any jurisdictional questions.

E. Questions Raised By Pending Motions

There is one motion currently pending before the Court -- Defendants' Motion to Compel Plaintiff John Hancock Life Insurance Company to Comply with Defendants' Rule 30(b)(6) Deposition Notice, filed on March 29, 2006.

F. Issues of Law

1. Plaintiff believes the issues of law are as follows:

- i. Whether John Hancock's internal use of the 10% Constant underwriting guideline changed the terms of the Loan Commitment.
- ii. Whether John Hancock's conduct in approving and preparing to close the Loan was "unfair and deceptive" such as to constitute a violation of M.G.L. c. 93A.
- iii. Whether John Hancock's conduct in approving and preparing to close the Loan was fraudulent under Pennsylvania law.
- iv. Whether the Agreement and John Hancock's conduct in Massachusetts is governed by Pennsylvania law.
- v. Whether the transaction contemplated in the Loan Commitment occurred "primarily and substantially" in the Commonwealth of Massachusetts so as to entitle Defendants to relief under M.G.L. c. 93A.

2. Defendants believe the issues of law are as follows:

Because violation of chapter 93A is a question for the Court, both issues of fact and law related to that claim are included below.

- i. The legal implications of the findings regarding the contested issues of fact, above, including the measure of damages, if any, for failure to close the Loan.
- ii. Whether Conditions 30(b) and 30(c) of the Loan Application, providing for retention of the Application Fee and Commitment Fee, constitute liquidated damages provisions that were reasonable estimates of the total damages that John Hancock would suffer in the event that the loan did not close due to a breach by Vesterra.
- iii. Whether any obligations under the Loan Application survived Vesterra's inability to achieve the occupancy requirements set forth in the Loan Application.
- iv. Whether John Hancock's addition of 10% Constant as a "disbursement requirement," and its manipulation of the financial projections (that were made a part of John Hancock's loan approval), effected material changes in the terms and conditions contained in the Loan Application.
- v. Whether John Hancock's conduct in intentionally not disclosing to Vesterra that it had added the 10% Constant as a "disbursement

requirement,” and had manipulated the financial projections made a part of the Loan Application, was “unfair and deceptive” such as to constitute a violation of M.G.L. c. 93A.

- vi. Whether the unfair and deceptive acts, including John Hancock’s decision to add and then not to disclose the 10% Constant requirement, occurred “primarily and substantially” in the Commonwealth of Massachusetts so as to entitle Defendants to relief under M.G.L. c. 93A.
- vii. The damages incurred by Vesterra as a result of such acts.
- viii. The measure of reasonable attorneys’ fees and costs.
- ix. Whether the conduct violating chapter 93A was willful or knowing, subjecting John Hancock to double or treble damages.

G. Amendments to the Pleadings

On March 29, 2006, the Court granted in part Defendants’ motion for leave to file a Second Amended Counterclaim. Defendants will file the Second Amended Counterclaim pursuant to the Court’s March 29, 2006 Order. Per the Court’s invitation, John Hancock intends to file a Motion to Dismiss in response to the Defendants’ Second Amended Counterclaim.

H. Additional Matters

The Parties anticipate filing one or more motions *in limine* prior to trial. The Parties are not aware at this time of any other matters that could aid in this disposition of the action, but reserve the right to bring such matters to the Court’s attention should they arise between now and the time of trial.

I. Probable Length of Trial

Based upon the Court’s customary 9:00 a.m. to 1:00 p.m. trial day, John Hancock and the Defendants estimate the probable length of trial to be five (5) trial days.

J. Witnesses

1. Plaintiff's Witnesses

i. Fact Witnesses (live or by deposition):

1. Ms. Patricia Coyne
John Hancock Life Insurance Company
Real Estate Finance Group
197 Clarendon Street
Boston, MA 02116
2. Mr. Brian Depolis
John Hancock Life Insurance Company
Real Estate Finance Group
486 Norristown Road, Suite 130
Blue Bell, PA 19422
3. Mr. Jonathan P. Ferrie
John Hancock Life Insurance Company
Real Estate Finance Group
486 Norristown Road, Suite 130
Blue Bell, PA 19422
4. Mr. Joseph Kelly
851 Wright Drive
Maple Glen, PA 19002
5. Mr. James Koller
892 Andorra Road
Lafayette Hill, PA 19444
6. Mr. Timothy J. Malik
John Hancock Life Insurance Company
Real Estate Finance Group
197 Clarendon Street, C-3
Boston, MA 02116
7. Ms. Helene McCole
John Hancock Life Insurance Company
Real Estate Finance Group
486 Norristown Road, Suite 130
Blue Bell, PA 19422

8. Mr. Frank Palopoli
1017 Lorien Drive
Ambler, PA 19002
9. Mr. Thomas C. Rogers
White and Williams LLP
1800 One Liberty Place
Philadelphia, PA 19103
10. Mr. Ivor Thomas
John Hancock Life Insurance Company
Real Estate Finance Group
197 Clarendon Street
Boston, MA 02116
11. Ms. Joan Uzdavinis
John Hancock Life Insurance Company
Real Estate Finance Group
197 Clarendon Street
Boston, MA 02116
12. All witnesses on Defendants' Witness List
13. All impeachment and rebuttal witnesses

ii. Expert Witnesses:

1. Mr. Simon Platt
StoneTurn Group, LLP
60 State Street
Suite 700
Boston, MA 02109
2. Mr. Walter E. Mercer
Paris Hill Realty Advisors
173 Oakleigh Road
Newton, MA 02458

2. Defendants' Witnesses

i. Fact Witnesses (live or by deposition):

1. James R. Koller
Vesterra Corporation
892 Andorra Road
Lafayette Hills, PA

2. Joseph P. Kelly
Vesterra Corporation
892 Andorra Road
Lafayette Hills, PA
3. Ivor Thomas
John Hancock Life Insurance Company
Real Estate Finance Group
197 Clarendon Street
Boston, MA 02116
4. Timothy J. Malik
John Hancock Life Insurance Company
Real Estate Finance Group
486 Norristown Road, Suite 130
Blue Bell, PA 19422
5. John P. Ferrie
John Hancock Life Insurance Company
Real Estate Finance Group
486 Norristown Road, Suite 130
Blue Bell, PA 19422
6. Patricia Coyne
John Hancock Life Insurance Company
Real Estate Finance Group
197 Clarendon Street
Boston, MA 02116
7. David Henderson
General Electric Real Estate
Boston, MA
8. Barry Nectow
ARCap REIT, Inc.
Boston, MA
9. Joan Uzdavinis
John Hancock Life Insurance Company
Real Estate Finance Group
197 Clarendon Street
Boston, MA 02116
10. All witness on Plaintiff's Witness List.

11. All impeachment and rebuttal witnesses.

ii. Expert Witnesses:

1. R. Larry Johnson
Veris Consulting, LLC
Washington, D.C.
2. Linda C. Spevacek
Bartram & Cochran, Inc.
Hartford, CT

K. Proposed Trial Exhibits

Plaintiff's list of proposed trial exhibits is attached hereto as Exhibit A. Defendants' list of proposed trial exhibits is attached hereto as Exhibit B. The Parties will work together to review and consolidate their lists into a single list prior to trial. The Parties reserve the right to supplement this list reasonably in advance of trial if and as necessary. The parties also have agreed to exchange reasonably in advance of trial any chalks or other demonstrative exhibits that they intend to use.

VESTMONT LIMITED PARTNERSHIP,
VESTMONT LIMITED PARTNERSHIP II,
VESTMONT LIMITED PARTNERSHIP III,
and VESTERRA CORPORATION d/b/a
MONTGOMERY SQUARE PARTNERSHIP

By their attorneys,

/s/ Robert D. Hillman

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COMPANY

By its attorneys,

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Philadelphia, PA 19103
Tele.: 215-665-8700

Date: March 30, 2006

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EXHIBIT A

List of Proposed Trial Exhibits

No.	Document Description	Date	Bates Range	Deposition Exhibit Number (if used as one)	Plaintiff's Objections	Defendants' Objections
1	2004 Lending Guidelines		JH 01468-01893			
2	Charts		V 2508-2512	Kelly 8		
3	Collection of e-mails between MSP and JP Morgan representatives regarding purchase of Avenel Property		V 2328-2507			
4	Documents Pertaining to Negotiation of Purchase of Avenel Property		V 1667-2235			
5	Examples of Reserve Calculations (with handwriting)		JH 01119	Malik 17		
6	Information on Avenel Property		JH 00660-00692			
7	JH Graphs of Cash Balances		JH 01412-01420	Uzdavinis 12 and 13		
8	Manulife Credit Procedures		JH 01894-02277			
9	Market Survey		JH 00738-00763			
10	Preliminary Loan Information Worksheet		JH 00102	Malik 11		
11	Property/Hazard Insurance Requirements		V 0569-0589			
12	Representative Projects for Vesteria		JH 00803	Koller 2; Kelly 2		
13	Vesteria Corporation's Principals		JH 00779	Koller 1; Kelly 1		
14	Documents Pertaining to Sale of Mercer Square Property					
15	Documents Pertaining to Sale of New Britain Village Property					
16	Documents Pertaining to Sale of Warwick Square Property					
17	Documents Pertaining to Sale of Townsmen Property	9/30/02				
18	Apartment Research Report	Nov-03	JH 01068-01071			
19	Mortgage Credit Policy	Apr-04	JH 01421-01467			
20	White & Williams Letter to MSP (Koller) from Rogers	6/9/2004	JH 00486-00487	Koller 13; Kelly 24		
21	E-mail from McIssac to Ferrie	6/11/2004	JH 00106-00119			
22	GMAC Letter to Kelly from Campbell	6/15/2004	V 1158-1159	Koller 4; Kelly 4		
23	E-mail from Ferrie to Malik	6/17/2004	JH 00100-00105	Malik 12; Ferrie 5		
24	JH Term Sheet with handwriting	6/18/2004	V 1181-1188	Koller 3; Kelly 3; Ferrie 7		
25	JH Term Sheet without handwriting	6/18/2004	JH 00074-00077	Ferrie 6		
26	Frank Palopoli Balance Sheet	6/30/2004	JH 00791-00801	Palopoli 1		
27	Joe Kelly Financial Statement	6/30/2004	JH 00783-00786	Kelly 7		
28	Koller Financial Statement	6/30/2004	JH 00787-00790			
29	White & Williams Letter to MSP (Koller) from Rogers	7/8/2004	JH 00475-00481	Koller 15		
30	Fax from Kelly to Depolis	7/12/2004	JH 01169-01171			
31	E-mail from Ferrie to Kelly	7/19/2004	V 0753-0781			
32	E-mail from Kelly to Ferrie	7/19/2004	JH 00057-00072			
33	JH Term Sheet without handwriting	7/21/2004	JH 00733-00737	Koller 6; Ferrie 8		
34	E-mail from Depolis to Ferrie	7/22/2004	JH 00053-00054			
35	E-mail from Ferrie to Kelly	7/29/2004	JH 00219-00289	Kelly 6; Ferrie 9 (00219 only)		
36	Letter from Ferrie to Kelly	7/29/2004	JH 00220-00221	Ferrie 11		
37	Letter from Ferrie to MSP	7/29/2004	V 0870-0939			
38	E-mail from Ferrie to Malik	7/30/2004	JH 00293-00295			
39	Loan Application/Commitment	7/30/2004	JH 00368-01028	Koller 8; Kelly 5; Coyne 5		
40	Loan Application/Commitment	7/30/2004	JH 00327-00366	Ferrie 2; Malik 3		
41	E-mail from Ferrie to Malik	8/2/2004	JH 00144-00146			
42	E-mail from Ferrie to Malik	8/2/2004	JH 00290			
43	Exhibit D Rate Lock Confirmation	8/2/2004	JH 00925-00926	Koller 7		
44	Interest Rate Circle Notification	8/2/2004	JH 00913-00920	Malik 7; Malik 16		
45	Interest Rate Circle Notification	8/2/2004	JH 00397-00404	Ferrie 15		
46	Interest Rate Circle Notification	8/2/2004	JH 01109-01117	Nectow 1; Uzdavinis 2		
47	Business Items Checklist	8/3/2004	JH 00954-00956			
48	Checklist Summary	8/3/2004	JH 01029-01030			
49	Aerial Photo Invoice	8/4/2004	JH 00696			
50	JH Internal Approval Documents	8/6/2004	JH 01128-01148	Coyne 1; Henderson 3		
51	E-mail from Malik to Ferrie	8/11/2004	JH 00135	Malik 6; Ferrie 4		

JH = John Hancock Life Insurance Company
MSP = Montgomery Square Partnership

52	E-mail from Malik to Ferrie	8/1/2004	JH 00131-00132	Malik 4; Ferrie 3; Coyne 2; Henderson 4		
53	Loans Approved 2003-2004	8/16/2004	JH 0123-00124			
54	JH Internal Approval Documents	8/16/2004	JH 00405-00425	Kelly 27; Ferrie 16; Malik 1; Henderson 6; Coyne 3; Uzdevinis 3		
55	Letter from Malik to Thomas and Henderson	8/16/2004	JH 01176	Henderson 7		
56	Letter from McCole to MSP (Kelly)	8/18/2004	JH 00694-00695	Kelly 11		
57	Assignment Memorandum to Closing Department	8/30/2004	JH 01177-01182			
58	Letter from Rogers to Russell (with attachments)	9/21/2004	V 0303-0488			
59	White & Williams Letter to Russell	9/21/2004	JH 00517-00521	Koller 9; Kelly 12		
60	E-mail from Russell to Rogers	9/23/2004	JH 00512-00513			
61	Letter from Rogers to Russell	12/1/2004	JH 00511			
62	Letter to Smith from Koller	12/5/2005	V 2955-2988			
63	2005 Lending Guidelines	2/1/2005	JH 02278-02514			
64	Property Management Agreement	4/2/2005	V 2544-2573			
65	E-mail from Rogers to Russell	4/2/2005	JH 00154			
66	E-mail from Depols to Ferrie	4/28/2005	JH 00153			
67	E-mail from Rogers to Russell	5/9/2005	JH 00152			
68	Letter from Leveroni to Stout	5/10/2005	V 0200-0207			
69	Letter from McCole to MSP (Kelly)	5/10/2005	JH 00445	Kelly 13		
70	Letter from McCole to MSP (Kelly) (with attachment)	5/12/2005	V 0566-0568			
71	E-mail from Delillo to Kelly	5/12/2005	V 2236-2245	Kelly 19		
72	Rockwood Engagement Letter	5/12/2005	V 1626-1632			
73	E-mail from Kelly to Koller	5/13/2005	V 1633			
74	E-mail from Ferrie to Malik	5/16/2005	JH 01194-01195			
75	E-mail from Rogers to Russell	5/16/2005	JH 00494-00502	Kelly 14		
76	Revised Closing Checklist	5/16/2005	JH 01223-01230			
77	E-mail from Marcus to Kelly	5/25/2005	V 2246-2248	Kelly 10		
78	E-mail from Malik to Roseen	6/1/2005	JH 01211-01212	Koller 10; Kelly 20; Malik 9; Ferrie 18		
79	E-mail from Ferrie to Kelly	6/1/2005	JH 00912	Kelly 21		
80	E-mail from Koller to Ferrie	6/7/2005	JH 00149	Koller 11; Kelly 22; Ferrie 20		
81	E-mail from Ferrie to Malik	6/9/2005	JH 01196	Koller 12; Kelly 23; Malik 10; Ferrie 21		
82	E-mail from Jordan to Kelly	6/9/2005	JH 01213			
83	E-mail from Jordan to Kelly	6/9/2005	V 2249-2253			
84	E-mail from Kelly to Koller	6/16/2005	V 1637-1642			
85	Fax from JH to Kelly and Costa	6/16/2005	JH 00483-00485	Kelly 15		
86	Letter from McCole to Kelly	6/16/2005	V 0590-0591			
87	Letter from Koller to Rogers	6/20/2005	JH 00482	Koller 14; Kelly 25		
88	E-mail from McCole to Kelly	6/21/2005	JH 01197	Kelly 16		
89	E-mail from McCole to Kelly	6/23/2005	V 0564-0565			
90	E-mail from McCole to Kelly	6/23/2005	JH 00157-00158			
91	Fax letter from McCole to Grant, Kelly & Koller	6/23/2005	V 0597-0599			
92	Fax letter from McCole to McNamara, Kelly & Koller	6/23/2005	V 0594-0596			
93	Letter from McCole to Grant	6/23/2005	V 0592-0593			
94	McCole's Telephone Logbook	6/23/2005	JH 01217-01222			
95	E-mail from Jordan to Kelly and Koller	7/13/2005	V 2258-2298	Kelly 17		
96	Letter from Koller to Rogers	7/15/2005	V 0120	Koller 16		
97	E-mail from Jordan to Kelly and Koller	7/20/2005	V 2299-2325	Kelly 18		
98	E-mail from Jordan to Kelly and Koller	8/1/2005	V 1655-1662			
99	E-mail from Schultz to Koller	8/5/2005	V 1666			
100	Unredacted Reinstatement Agreement	9/23/2005	V 1038-1062			
101	Third Amendment to P&S	9/28/2005	JH 00524-00637	Koller 19; Kelly 9		
102	Letter from Koller to Schultz	11/9/2005	V 2143	Kelly 26		
103	Confession of Judgment	12/23/2005	V 1575-1578			
104	Fourth Amendment to P&S	12/23/2005	V 1084-1086	Koller 20		

EXHIBIT B

DEFENDANTS' TRIAL EXHIBIT LIST¹

EXHIBIT NUMBER	DESCRIPTION	DATE	BATES RANGE
1.	Application to John Hancock Life Insurance Company for a First Mortgage Loan	7/30/04	JH00958-1028
2.	Letter from O. Campbell/B. Maguire to J. Kelly	6/15/04	V1158-1159
3.	E-Mail from J. Ferrie to T. Malik, attaching Preliminary Loan Information	6/17/04	JH00100-105
4.	Letter from J. Ferrie to J. Kelly	6/18/04	JH00074-77; V1181-1188
5.	Letter from O. Maguire to J. Kelly	7/2/04	V1160
6.	Fax/Letter from J. Kelly to O. Maguire	7/14/04	V1161-1168
7.	Letter from J. Ferrie to R. Kelly	7/21/04	JH00733-737
8.	Letter from J. Ferrie to J. Kelly	7/29/04	JH00219
9.	E-Mail from T. Malik to J. Ferrie	7/29/04	JH00173
10.	Letter from J. Ferrie to Montgomery Square	7/29/04	JH00220-221
11.	E-Mail from T. Malik to J. Ferrie	7/29/04	JH00218
12.	Letter from T. Malik to J. Ferrie	7/30/04	JH00162-163

¹ Defendants reserve the right to further amend and/or supplement their pretrial exhibit lists until after the deposition of Ivor Thomas has been completed, and Defendants' Motion to Compel Plaintiff to Comply with Defendants' Rule 30(b)(6) Deposition Notice has been decided. In addition, Defendants reserve the right to offer in evidence the exhibits listed in Plaintiff's Proposed Trial Exhibit List, or offered or marked by Plaintiff. Defendants also reserve the right to offer in evidence documents not listed above that are used for cross-examination or impeachment purposes, or on rebuttal.

EXHIBIT NUMBER	DESCRIPTION	DATE	BATES RANGE
13.	Interest Rate Circle Notification, and attachments	8/2/04	JH00913-920
14.	Example of Reserve Calculations (w/handwriting)	8/2/04	JH01119
15.	Exhibit 1A - Example of Reserve Calculations (Avenel Exhibit 1A.xls)	8/2/04	JH01122
16.	Exhibit 1A - Example of Reserve Calculations (Avenel Exhibit 1A.xls)	8/2/04	JH01123
17.	John Hancock Preliminary Loan Information	8/2/04	JH01124
18.	Exhibit 1A - Example of Reserve Calculations (Avenel Exhibit 1A new expenes.xls)	8/2/04	JH01125
19.	Exhibit D, Rate Lock Confirmation	8/2/04	JH00925-926
20.	Interest Rate Circle Form	8/2/04	JH00397-404
21.	Interest Rate Circle Notification	8/2/04	JH01109-JH01117
22.	Fax and attachment, from T. Malik to J. Koller	8/2/04	V0116-V0118
23.	E-Mail from T. Malik to J. Ferrie	8/2/04	JH00140
24.	E-Mail from J. Ferrie to T. Malik	8/2/04	JH0127-128
25.	Internal John Hancock Loan Approval Package	8/10/04	JH01128-1148
26.	E-Mail from T. Malik to J. Ferrie	8/11/04	JH00131-132

EXHIBIT NUMBER	DESCRIPTION	DATE	BATES RANGE
27.	E-Mail from T. Malik to J. Ferrie	8/11/04	JH00135
28.	E-Mail from J. Ferrie to R. Kelly	8/11/04	JH00133-134
29.	E-Mail from T. Malik to D. Henderson	8/12/04	JH01175
30.	Internal John Hancock Loan Approval Package	8/16/04	JH00405-425
31.	Memo from T. Malik to I. Thomas and D. Henderson	8/16/04	JH01176
32.	Memo from P. Coyne to T. Malik	8/17/04	JH01174
33.	Letter from H. McCole to J. Kelly	8/18/04	JH00522
34.	Letter from T. Rogers to M. Russell	9/2/04	JH00517-521
35.	Letter from Jessica Yaffie Leveroni to Leonard Shatz, Esquire	5/9/05	JH00505-508
36.	Letter from H. McCole to J. Kelly	5/10/05	JH00445
37.	E-Mail from T. Malik to T. Rosen	5/31/05	JH01211-212
38.	E-Mail from J. Ferrie to J. Kelly	6/1/05	JH00151
39.	E-Mail from J. Ferrie to J. Kelly and J. Koller	6/6/05	JH00912; V0115; JH01101
40.	E-Mail from J. Koller to J. Ferrie	6/7/05	JH00149
41.	E-Mail from J. Ferrie to T. Malik	6/9/05	JH01196-1210

EXHIBIT NUMBER	DESCRIPTION	DATE	BATES RANGE
42.	Letter from J. Koller to T. Rogers, Esquire	7/15/05	V0120
43.	Letter from A. Francis to Wilmington Trust of Pennsylvania	8/3/05	JH00312-318
44.	E-Mail from B. Davis to B. Friedman	8/9/05	JH00446-454
45.	Assignment Memorandum to Closing Department	8/18/05	JH00296-311
46.	John Hancock Real Estate Finance Group Lending Guidelines - January 26, 2005	1/25/05	JH02278-2514
47.	Lending Guidelines - John Hancock Life Insurance Company and John Hancock Real Estate Finance, Inc.		JH01468-1893
48.	Manulife Credit Procedures		JH01894-2277
49.	Manulife Financial Mortgage Credit Policy		JH01421-1443
50.	Manulife Financial Mortgage Credit Policy		JH01444-1467
51.	John Hancock Financial Services, Inc. 2004 Form 10-K		
52.	John Hancock Life Insurance Company, 2005 Annual Statement		
53. (*)	John Hancock Cash Balances - JHLICO	6/30/05	JH01382-1385
54. (*)	John Hancock Cash Balances - JHVLICO & MIC (formerly IPLICO)	6/30/05	JH01386
55. (*)	John Hancock Cash Balances - JHFS/JHRECO	6/30/05	JH01387

EXHIBIT NUMBER	DESCRIPTION	DATE	BATES RANGE
56. (*)	John Hancock Cash Balances - JHLICO	6/30/05	JH01406-1409
57. (*)	John Hancock Cash Balances - JHVLICO & MIC (formerly IPLICO)	6/30/05	JH01410
58. (*)	John Hancock Cash Balances - JHFS/JHRECO	6/30/05	JH01411
59. (*)	John Hancock Cash Balances - JHVLICO & MIC (formerly IPLICO)	7/29/05	JH01392
60. (*)	John Hancock Cash Balances - JHFS/JHRECO	7/29/05	JH01393
61. (*)	John Hancock Cash Balances - JHLICO	7/29/05	JH01400-1403
62. (*)	John Hancock Cash Balances - JHVLICO & MIC (formerly IPLICO)	7/29/05	JH01404
63. (*)	John Hancock Cash Balances - JHFS/JHRECO	7/29/05	JH01405
64. (*)	John Hancock Cash Balances - JHLICO	8/31/05	JH01388-1391
65. (*)	John Hancock Cash Balances - JHLICO	8/31/05	JH01394-1397
66. (*)	John Hancock Cash Balances - JHVLICO & MIC (formerly IPLICO)	8/31/05	JH01398
67. (*)	John Hancock Cash Balances - JHFS/JHRECO	8/31/05	JH01399
68. (*)	John Hancock Cash Balances - JHLICO	8/31/05	JH01412-1415
69. (*)	John Hancock Cash Balances - JHVLICO & MIC (formerly IPLICO)	8/31/05	JH01416

EXHIBIT NUMBER	DESCRIPTION	DATE	BATES RANGE
70. (*)	John Hancock Cash Balances - JHFS/JHRECO	8/31/05	JH01417
71. (*)	John Hancock Cash Balances - JHVLICO & MIC (formerly IPLICO)	8/31/05	JH01418
72. (*)	John Hancock Cash Balances - JHFS/JHRECO	8/31/05	JH01419
73. (*)	John Hancock Cash Balances - JHLICO	8/31/05	JH01420
74.	Preferred Employer List		V2582-V2583
75.	Apartment Shoppers Guide	1/06	V2574-V2576
76.	Avenel Advertising Book	2005	V2584-V2891
77.	Avenel Flyers	2005	V2892-V2932
78.	Avenel Concessions	2005	V2933-V2950
79.	Apartment Guide	October 2005	V2579-V2581
80.	Apartment Finder	Winter 2005-06	V2577-V2578
81.	Defendants' Answer & Counterclaim	9/6/05	
82.	Plaintiff John Hancock Life Insurance Company's Response to Defendants' First Set of Interrogatories	1/4/06	
83.	Plaintiff John Hancock Life Insurance Company's Response to Defendants' First Requests for the Production of Documents and Things	1/4/06	

EXHIBIT NUMBER	DESCRIPTION	DATE	BATES RANGE
84.	Privilege Log of John Hancock Life Insurance Company	1/27/06	
85.	Defendants' Notice of Rule 30(b)(6) Videotape Deposition of Plaintiff John Hancock Life Insurance Company, and accompanying cover letter	2/1/06	
86. (*)	Affidavit of John P. Ferrie in Support of Plaintiff John Hancock Life Insurance Company's Motion for Preliminary Injunctive Relief	2/8/06	
87. (*)	Affidavit of Timothy J. Malik in Support of Plaintiff John Hancock Life Insurance Company's Motion for Preliminary Injunctive Relief	2/14/06	
88.	Defendants' Amended Counterclaim	2/16/06	
89. (*)	Supplemental Affidavit of Timothy J. Malik in Support of Plaintiff John Hancock Life Insurance Company's Motion for Summary Judgment	3/1/06	
90.	Plaintiff John Hancock Life Insurance Company's Response to Defendants' Second Requests for the Production of Documents and Things	3/3/06	
91.	Plaintiff John Hancock Life Insurance Company's Response to Defendants' Second Set of Interrogatories	3/3/06	
92. (*)	Expert Witness Report of Walter E. Mercer	3/24/06	
93. (*)	Expert Report of Simon Platt	3/24/06	

EXHIBIT NUMBER	DESCRIPTION	DATE	BATES RANGE
94.	Figures Comparison, Exhibit C to the expert witness report of Linda Spevacek	3/24/06	
95.	Documents pertaining to Regatta Apartments		

Items containing an asterisk (*) will only be used for indemnification or identification purposes.